

MEMORANDUM OPINION

December 1, 2009

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

In re:

SHARON JANE DIXON

Case No.09-32439
Chapter 7

Debtor

BEFORE THE HONORABLE RICHARD STAIR, JR.

UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR THE DEBTOR:

ROBERT R. REXRODE, ESQ.
601 Concord Street, SW, Suite 106
Knoxville, Tennessee 37919

CHAPTER 7 TRUSTEE:

JOHN P. NEWTON, JR., ESQ.
1111 Northshore Drive, Suite S-570
Knoxville, Tennessee 37919

1 THE COURT: This contested matter is before me on the Objection to
2 Exemption filed by the Chapter 7 Trustee on July 14, 2009, objecting to the Debtor's
3 claim to a \$25,000.00 homestead exemption in her interest in real property located at
4 1105 Yoakum Street in New Tazewell, Tennessee.

5 This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

6 In Schedule C to her petition, Ms. Dixon claimed her homestead
7 exemption under Tennessee Code Annotated § 26-2-301(f), which provides:

8 Notwithstanding subsection (a) to the contrary, an individual
9 who has one (1) or more minor children in the individual's
10 custody shall be entitled to a homestead exemption not
11 exceeding twenty-five thousand dollars (\$25,000) on real
12 property that is owned by the individual and used by the
13 individual as a principle place of residence.

14 The Voluntary Petition commencing Ms. Dixon's Chapter 7 bankruptcy
15 case was filed on April 30, 2009. At that time, she owned the 1105 Yoakum Street
16 property in common with a sister and brother, with Ms. Dixon owning one-half the
17 property and the sister and brother, as I understand the testimony, owning the other
18 half. Residing with Ms. Dixon in the house at the time the case was commenced was
19 her son, who was eighteen years old; her daughter, Melissa, who was twenty-five
20 years old, and Melissa's two minor children, Tearron, I believe the name was, who
21 was five years of age, and Nevaeh, who was two years of age. Melissa is a single
22 parent and has custody of the two children by virtue of the fact that she is their
23 mother. Melissa is in the Reserves, and at least two weeks out of the month, she
24 travels to Georgia to fulfill, or she did at that time, her Reserve obligation. She is
25 paid as a Reservist and, as I understand Ms. Dixon's testimony, when she is not in

1 the Reserves, she is going to school. She has given the Debtor an authorization dated
2 December 8, 2008, that provides:

3 On 8 December 2008, I, Melissa Dixon, hereby appoint my
4 mother, Sharon J. Dixon, temporary guardianship of my
5 children, Tearron Dixon and Nevaeh Johns. She will be able to
6 make decisions for medical, dental, register for school and
7 other things that concern the welfare and wellbeing of my
8 children. I am currently in the US Army Reserves and my
9 duties requires me to leave my children with my mother for
10 their care.

11 A couple of things are readily apparent and that is that at the time the
12 petition was filed, Melissa Dixon resided in the home of Ms. Dixon at 1105 Yoakum
13 Street in New Tazewell, regardless of whether she was on Reserve duty or not, and
14 that is where her principal residence was, that is where she lived with her two
15 children. Certainly there is no dispute that when she was gone, Ms. Dixon cared for
16 the children, met their needs, took them to whatever events were required, and
17 otherwise looked after them. The issue is whether that constitutes "custody" under
18 the terms of the statute, and I have considerable difficulty finding that it does because,
19 in my estimation, custody has some sort of legal connotation; if it did not, then it
20 would be very easy for an individual to do some pre-bankruptcy planning and,
21 basically, have a child in your house over the weekend, or for a couple of weeks, take
22 care of them, and then come in here and argue that they have custody for purposes of
23 the \$25,000.00 homestead exemption afforded debtors under Tennessee Code
24 Annotated § 26-2-301(f).

25 There is no case in point. This statute is relatively new. If one goes to the

1 domestic relations section of the Code, particularly Tennessee Code Annotated
2 §§ 36-6-101 through 112, there are numerous statutes discussing custody. In
3 particular, Tennessee Code Annotated § 36-6-106 talks about child custody, and I
4 quote just a small portion of it:

5 (a) In a suit for annulment, divorce, separate maintenance, or in
6 any other proceeding requiring the court to make a custody
7 determination regarding a minor child, the determination shall
8 be made on the basis of the best interest of the child.

9 And then there is a litany of criteria that go into the court's determination of an
10 appropriate award of custody.

11 If one goes into the juvenile courts and proceedings, Title 37 of Tennessee
12 Code Annotated § 37-1-102, entitled "Definitions," one will read as follows:

13 (b) As used in this part, unless the context otherwise requires
14 . . . (7) 'Custodian' means a person, other than a parent or legal
15 guardian, who stands in loco parentis to the child or a person to
16 whom temporary legal custody of the child has been given by
17 order of a court;

18 (8) 'Custody' means the control of actual physical care of the
19 child and includes the right and responsibility to provide for the
20 physical, mental, moral and emotional well-being of the child.

21 'Custody,' as herein defined, relates to those rights and
22 responsibilities as exercised either by the parents or by a person
23 or organization granted custody by a court of competent
24 jurisdiction. 'Custody' shall not be construed as the termination
25 of parental rights set forth in § 37-1-147. 'Custody' does not

1 exist by virtue of mere physical possession of the child[.]

2 And that really is what we have here because the mother, Melissa, notwithstanding
3 that she has authorized Ms. Dixon to make certain decisions on behalf of the children
4 when she is on duty in the Reserves, she is the custodial parent of these children. She
5 is their mother. Ms. Dixon is doing what any good grandparent would do, and she is
6 a good grandparent. The children resided with Melissa, their mother, in the Debtor's
7 home and Ms. Dixon takes care for them when the mother is out of town. This does
8 not equate to legal custody and does not give rise to the § 26-2-301(f) \$25,000.00
9 homestead exemption allowable to "an individual who has one (1) or more minor
10 children in the individual's custody." While Ms. Dixon may have "possession" of
11 these children during the period of time Melissa is gone, there has been no legal
12 change of custody. As I said, Ms. Dixon is doing what a good grandparent would
13 do.

14 It is my conclusion that, as is contemplated by Tennessee Code Annotated
15 §§ 36-6-106 and 37-1-102, the word "custody" as used in § 26-2-301(f) means a
16 court-ordered placement of a minor child under the care and control of the individual
17 claiming the \$25,000.00 homestead exemption.

18 For these reasons, the Trustee's objection will be sustained. The
19 \$25,000.00 homestead exemption will be disallowed. The exemption will, however,
20 be allowed under § 26-2-301(a) in the amount of \$5,000.00.

21 This Memorandum constitutes findings of fact and conclusions of law as
22 required by FED. R. CIV. P. 52(a), made applicable to contested matters by
23 Rule 9014(c) of the Federal Rules of Bankruptcy Procedure. I will not ask the court
24 reporter to transcribe my opinion. If it is transcribed at the request of either party,
25 Ms. Dunn will give me a hard copy and I will review it and make such edits as I

1 deem appropriate, after which it will be filed and served on parties. I will see that an
2 order is entered today.

3 FILED: December 4, 2009

4 /s/ Richard Stair, Jr.
5 RICHARD STAIR, JR.
6 U.S. BANKRUPTCY JUDGE

7 Note:

8 This transcript contains the court's edits, corrections, and non-substantive changes to
9 the oral opinion given in open court on December 1, 2009.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25